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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,466	11/14/2005	Gerhard Albrecht	MBZ-0465	4840

23575 7590 02/26/2007
CURATOLO SIDOTI CO., LPA
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EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
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1755

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/524,466

Applicant(s)

ALBRECHT ET AL.

Examiner

Paul Marcantoni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

The applicants' 1/30/07 response has been considered but is not deemed persuasive. All previous rejections have been withdrawn and is limited now only to the 35 USC 103 rejection.

35 USC 103

Claims 1-18 are rejected under 35 USC 103(a) as being unpatentable over Schapira et al. '236 or alone or in view of Albrecht et al. (US Patent No. 5,369,198), Caspar et al. '784, Burge et al. '154 or '144, or Shimizu et al. '164 B2.

Note 1: For a more specific recitation of this rejection, please refer to the examiner's previous office actions. (with respect to Schapira alone or in view of Albrecht '198).

Note 2: The italicized secondary references were added to this rejection to teach that mortar and concrete can be sprayed (see claims). It would have been an obvious design choice to make the mortar or concrete of Schapira sprayable as mortar and concrete can be made sprayable as shown by these references.

Note 3: Persinski et al. ('845 or '921) have been withdrawn not because they agree with applicants' remarks. It has been withdrawn because it teaches the same as Schapira and to reduce or simplify issues in prosecution.

Response:

Schapira:

First, as stated in the previous final rejection of 10/30/06, Schapira does provide motivation to combine references. Schapira teach the addition of citric acid as stabilizing agent (col.3, lines 24-30) and also 2-phosphobutane 1,2,4 tricarboxylic acid (col.5, lines 45-52). Schapira further teach that the composition of his invention can be used simultaneously with the superplasticizers of the prior art (col.7, lines 17-18). Albrecht et al. do teach a plasticizer (or superplasticizer) that is a prior art and a known and conventional superplasticizer already in use in the prior art. It would have been an

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obvious design choice for one of ordinary skill in the art to substitute one known superplasticizer for another known superplasticizer (Albrecht '198) because they are both functionally equivalent (This is the motivation for examiner's combination).

The applicants argue Schapira individually and do not address the combination in stating that they do not teach the copolymer plasticizer (component (3)). There is no disagreement but it is improper for applicants to argue or attack references individually and not address the combination of references in the rejection. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The applicants also argue that the prior art does not teach a sprayable cement but merely grouts, slags, concretes, and mortars. In response, the examiner has added Caspar et al. '784, Burge et al. '154 or '144, or Shimizu et al. '164 B2 to the combination reference to teach that mortar and concrete can be sprayable and control of the properties to do so thus would have been an obvious design choice for one of ordinary skill in the art. Thus, applicants' arguments that Schapira could not be sprayable are not persuasive because concrete and mortar can be made sprayable.

It is also noted that for all product claims (including claim 1 to a fluidizing admixture) that the sprayability of this cement mixture is an intended use. The new use of a known composition is not a patentable distinction.

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The applicants argue that their superplasticizer (which is the same as a plasticizer, water reducing agent, superplasticizer, liquefier, or dispersing agent-see col.1, lines 22-23 of Albrecht '198) cannot be substituted for Schapira's superplasticizer. The examiner disagrees. Both have the same function in a cement and both would have been expected thus to be functionally equivalent. (This is the motivation to combine references). Further, as mentioned previously, the Schapira cement composition can be made sprayable as the added secondary references above teach that both concrete and mortar can be made sprayable. One of ordinary skill in the art could control the properties of the Schapira cement to make it sprayable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Marcantoni
Primary Examiner
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